

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
SHELBY DIVISION**

IN RE:)
CLEMMER'S CONSTRUCTION, LLC)
) **CASE NO. 23-40136**
) **CHAPTER 11**
Debtor.)
_____)

MOTION FOR AUTHORITY TO CONTINUE PAYROLL PRACTICES

COMES NOW the Debtor, Clemmer's Construction, LLC, by and through counsel, and moves the Court for entry of an order pursuant to Sections 105, 345, 363, 1107, and 1108 of Title 11 of the United States Code authorizing the Debtor to maintain current payroll practices as to its current employees/independent contractors.

JURISDICTION

1. The Court has jurisdiction over the motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue of these proceedings and the Motion in this Court is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested herein are sections 105, 345, 363, 1107, and 1108 of the Bankruptcy Code.

BACKGROUND

3. On August 3, 2023 (the “Petition Date”), Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Case”). Debtor is operating its business and managing its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No examiner or statutory committee has yet been appointed in this Chapter 11 Case. David Nave has been appointed Subchapter V Trustee (the “Subchapter V Trustee”).

4. As a small business debtor, the Debtor utilizes four or five individuals to operate equipment of the Debtor, and to provide labor. These individuals work on an "as needed" basis, and as a result, these

individuals requested that the Debtor pay them as independent contractors, and the Debtor has consistently paid these individuals as independent contractors.

5. It is the practice of the Debtor to disburse funds on Friday of each week to pay its independent contractors for the work performed that week, with the result that there is no “holdback” as to payment to these independent contractors.

6. The Debtor paid its independent contractors on August 3, 2023, the day of filing of the petition, with the result that there is no pre-petition obligation to these independent contractors, as they have been paid for their work through the date of filing of the petition.

7. The Debtor wishes to continue the practice of paying its independent contractors on Friday of each week for the work performed by them during that week as requested by the Debtor.

8. The Debtor does not propose any increase or decrease in the rate of compensation paid to its independent contractors.

WHEREFORE, the Debtor prays that the Court enter its order authorizing the Debtor to continue its practice of paying its independent subcontractors on Friday of each week, for work performed up to the close of business on that Friday.

This the 23rd day of August, 2023.

/s/ R. Keith Johnson
R. KEITH JOHNSON
Attorney for Debtor
1275 S. NC 16 Bus. Hwy.
Stanley, NC 28164
(704) 827-4200
NCSB 8840

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| | | |
|--|---|--------------------------|
| IN RE: |) | |
| CLEMMER'S CONSTRUCTION, LLC |) | CASE NO. 23-40136 |
| |) | CHAPTER 11 |
| Debtor. |) | |
| <hr style="border: 0.5px solid black;"/> |) | |

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Debtor has filed a MOTION FOR AUTHORITY TO CONTINUE PAYROLL PRACTICES, a copy of which is enclosed herewith and incorporated by reference. The Court will conduct a hearing of said motion on September 29, 2023, at 10:30 a.m. at the Cleveland County Courthouse, 100 Justice Place, 3rd Floor, Shelby, NC 28150.

This the 23rd day of August, 2023.

/s/ R. Keith Johnson
R. KEITH JOHNSON
Attorney for Debtor
1275 S. NC 16 Bus. Hwy.
Stanley, NC 28164
(704) 827-4200
NCSB 8840

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CASE NO. 23-40136
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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on the below date, the undersigned served a copy of the **MOTION FOR AUTHORITY TO CONTINUE PAYROLL PRACTICES** either electronically or by depositing, enclosed in a postpaid wrapper, properly addressed to the following parties in interest, at their last known addresses as shown below, and to the entire creditor matrix, in a post office or official depository under the exclusive care and custody of the United States Postal Service:

Shelley Abel (ECF)
Bankruptcy Administrator

This the 23rd day of August, 2023.

/s/ R. Keith Johnson
R. KEITH JOHNSON
Attorney for Debtor
1275 S. NC 16 Bus. Hwy.
Stanley, NC 28164
(704) 827-4200
NCSB 8840

Label Matrix for local noticing
0419-4
Case 23-40136
Western District of North Carolina
Shelby
Wed Aug 23 09:43:43 EDT 2023

1402 Mirror Lake Rd.
Lincolnton, NC 28092-7914

Clemmer's Construction, LLC
1402 Mirror Lake Rd.
Lincolnton, NC 28092-7914

Clemmer's Landscape, Inc.
1402 Mirror Lake Rd.
Lincolnton, NC 28092-7914

Commercial Credit Group
525 N. Tryon St., Ste. 1000
Charlotte, NC 28202-0210

Concrete Supply Co.
3823 Raleigh St.
Charlotte, NC 28206-2042

Crete Solutions, LLC
2005 Eastwood Rd., Ste. 200
Wilmington, NC 28403-7233

(p)INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 7346
PHILADELPHIA PA 19101-7346

Internal Revenue Service
P.O. Box 7317
Philadelphia, PA 19101-7317

(c)R. KEITH JOHNSON
1275 S NC 16 BUSINESS HWY
STANLEY NC 28164-8822

Niall T. McLachlan
Commercial Credit Group Inc
525 N. Tryon Street
Ste 1000
Charlotte, NC 28202-0210

Michael Clemmer
1402 Mirror Lake Rd.
Lincolnton, NC 28092-7914

NC Department of Revenue
P. O. Box 25000
Raleigh, NC 27640-0100

James David Nave
James David Nave, Attorney
51 Lawrence Place
Asheville, NC 28801-1428

North Carolina Department of Revenue
Bankruptcy Unit
P.O. Box 1168
Raleigh, NC 27602-1168

U.S. Bankruptcy Administrator Office
401 W. Trade Street
Suite 2400
Charlotte, NC 28202-1633

U.S. Securities Exchange
Office of Reorganization
950 East Paces Ferry Road, N.E.
Suite 900
Atlanta, GA 30326-1382

(p)UNITED STATES ATTORNEY'S OFFICE WDNC ASHEV
100 OTIS STREET
ROOM 233
ASHEVILLE NC 28801-2688

Westlake Financial
4751 Wilshire Blvd., #100
Los Angeles, CA 90010-3847

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g) (4).

Internal Revenue Service
320 Federal Place
Greensboro, NC 27401

United States Attorney
Federal Courthouse Rm. 233
100 Otis Street
Asheville, NC 28801-2608

Addresses marked (c) above for the following entity/entities were corrected
as required by the USPS Locatable Address Conversion System (LACS).

R. Keith Johnson
1275 South Hwy 16
Stanley, NC 28164

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

| | | |
|---------------------------------|---------------------|----|
| (d) Commercial Credit Group Inc | End of Label Matrix | |
| 525 N. Tryon St. | Mailable recipients | 18 |
| Suite 1000 | Bypassed recipients | 1 |
| Charlotte, NC 28202-0210 | Total | 19 |